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2
3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION
6

7 SPENCER SUTTON,
8 Plaintiff,
9

10 vs.

11 CITY AND COUNTY OF SAN
12 FRANCISCO, CHRISTOPHER M.
13 MORRIS, CRAIG L. LEONG, STEVEN D.
14 FERRAZ, and DOES 1-25, inclusive,
15 Defendants.

Case No: C 10-4563 SBA

DISMISSAL ORDER

16 On October 1, 2012, Defendants City and County of San Francisco, Christopher M.
17 Morris, Craig L. Leong, and Steven D. Ferraz (collectively, "Defendants") filed a motion
18 for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Dkt. 87.
19 Under Civil Local Rule 7-3(a), Plaintiff Spencer Sutton's ("Plaintiff") opposition or
20 statement of non-opposition to the motion was due on October 18, 2012.¹ Following
21 Plaintiff's failure to file a timely response to Defendants' motion for summary judgment and
22 his failure to appear at the settlement conference scheduled for November 7, 2012, the
23 Court issued an Order to Show Cause directing Plaintiff to file a memorandum within
24 fourteen (14) days of November 21, 2012 showing cause why the instant action should not
25 be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to
26 prosecute and failure to comply with a Court order. Dkt. 91. To date, Plaintiff has not filed

27 ¹ Under Civil Local Rule 7-3(a), any opposition to a motion must be filed and served
28 not more than 14 days after the motion was filed. Where, as here, the motion was served
by mail pursuant to Fed.R.Civ.P. 5(b)(2)(C), the deadline is extended by 3 days. N.D. Cal.
Civ. L.R. 7-3(a).

1 a response to the Court's November 21, 2012 Order to Show Cause. Nor has Plaintiff filed
2 a response to Defendants' motion for summary judgment.

3 An action may be dismissed under Rule 41(b) for failure to prosecute or to comply
4 with a Court order. See Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d
5 683, 689 (9th Cir. 2005) (recognizing that a district court may dismiss an action pursuant to
6 Rule 41(b) sua sponte for a plaintiff's failure to prosecute or comply with a court order);
7 Ferdick v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) ("the district court may dismiss
8 an action for failure to comply with any order of the court"). "In determining whether to
9 dismiss a claim for failure to prosecute or failure to comply with a court order, the Court
10 must weigh the following factors: (1) the public's interest in expeditious resolution of
11 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to
12 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public
13 policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,
14 642 (9th Cir. 2002).

15 In the instant case, the Court finds that the above-referenced factors weigh in favor
16 of dismissal. With regard to the first factor, "[t]he public's interest in expeditious resolution
17 of litigation always favors dismissal." Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th
18 Cir. 1999). This is particularly true in the instant case where Plaintiff has impeded the
19 Court's ability to move this case forward by failing to respond to Defendants' motion for
20 summary judgment, failing to appear at the November 7, 2012 settlement conference, and
21 failing to respond to this Court's November 21, 2012 Order to Show Cause.

22 The second factor, the Court's need to manage its docket, also militates in favor of
23 dismissal. See Pagtalunan, 291 F.3d at 642 ("It is incumbent upon the Court to manage its
24 docket without being subject to routine noncompliance of litigants"); Yourish, 191 F.3d at
25 990 (recognizing court's need to control its own docket); see also Ferdik, 963 F.2d at 1261
26 (non-compliance with a court's order diverts "valuable time that [the court] could have
27 devoted to other major and serious criminal and civil cases on its docket"). The Court
28 cannot manage its docket if it maintains cases where, as here, a Plaintiff disregards Court

1 Orders and fails to prosecute his case. The Court must devote its limited resources to cases
2 in which the litigants are actually proceeding.

3 The third factor, the risk of prejudice to the defendants, generally requires that "a
4 defendant . . . establish that plaintiff's actions impaired defendant's ability to proceed to trial
5 or threatened to interfere with the rightful decision of the case." Pagtalunan, 291 F.3d at
6 642. At the same time, the Ninth Circuit has "related the risk of prejudice to the plaintiff's
7 reason for defaulting." Id. Here, Plaintiff has offered no explanation for his failure to
8 respond to Defendants' motion for summary judgment, appear at the November 7, 2012
9 settlement conference, or respond to the Court's November 21, 2012 Order to Show Cause.
10 These facts weigh strongly in favor of dismissal. See Yourish, 191 F.3d at 991-992.

11 As for the fourth factor, the Court has already considered less drastic alternatives to
12 dismissal. As noted, the Court afforded Plaintiff an opportunity to show cause why the
13 instant action should not be dismissed and warned Plaintiff that his failure to comply with
14 the Court's November 21, 2012 Order to Show Cause would be deemed sufficient grounds
15 to dismiss this action. "[A] district court's warning to a party that failure to obey the court's
16 order will result in dismissal can satisfy the 'consideration of [less drastic sanctions]'
17 requirement." Ferdik, 963 F.2d at 1262.

18 The final factor, which favors disposition of cases on the merits, by definition,
19 weighs against dismissal. Pagtalunan, 291 F.3d at 643 ("Public policy favors disposition of
20 cases on the merits. Thus, this factor weighs against dismissal.").

21 In sum, the Court concludes that four of the five relevant factors weigh strongly in
22 favor of dismissing this action in its entirety. Pagtalunan, 291 F.3d at 643 (affirming
23 dismissal where three factors favored dismissal, while two factors weighed against
24 dismissal). Accordingly,

25 IT IS HEREBY ORDERED THAT the instant action is DISMISSED WITHOUT
26 PREJUDICE pursuant to Rule 41(b). The Clerk shall close the file and terminate all
27 pending matters.
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1 IT IS SO ORDERED.

2 Dated: 12/10/12

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4 SAUNDRA BROWN ARMSTRONG
5 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SUTTON et al,

5 Plaintiff,

6 v.

7 CITY AND COUNTY OF SAN FRANCISCO
8 ET AL et al,

9 Defendant.
10 _____/

11 Case Number: CV10-04563 SBA

12 **CERTIFICATE OF SERVICE**
13

14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
15 Court, Northern District of California.

16 That on December 13, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
17 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
18 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
19 receptacle located in the Clerk's office.
20
21

22 Spencer Sutton
23 c/o Margaret Nielson
24 3744 N.E. 75th Avenue
25 Portland, OR 97213

26 Dated: December 13, 2012

Richard W. Wieking, Clerk

27 By: Lisa Clark, Deputy Clerk
28